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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,309	12/14/2001	Norman Thomas Jennings	40121/00101	8415

30636 7590 07/02/2003

FAY KAPLUN & MARCIN, LLP  
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NEW YORK, NY 10038

EXAMINER
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PRINCE, FRED G

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 07/02/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/020,309

Applicant(s)

JENNINGS ET AL.

Examiner

Fred Prince

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 June 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8, 11 and 12 is/are allowed.
- 6) ☐ Claim(s) 1-7, 9, 10, 13-17, 19-21 and 25 is/are rejected.
- 7) ☐ Claim(s) 18 and 22-24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### *Priority*

1. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Australia on December 15, 2000. It is noted, however, that applicant has not filed a certified copy of the foreign application as required by 35 U.S.C. 119(b).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 7, 9, 13-16, 19, and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Golub.

Golub, directed toward a method of treating sewage (col. 2, line 11), teaches a plurality of holding tanks (40, 42, 44) containing fish (50) which process sewage.

It is submitted that a sediment layer is inherently formed and collected in the tanks as Golub discloses no fish excreta removal step in the tanks.

4. Claims 1-4, 7, 9-10, 13-16, 19-21, and 25 are rejected under 35 U.S.C. 102(a) as being anticipated by Mamoru (WO 00/41976).

Mamoru, directed toward a method of treating sewage (abstract), teaches a plurality of holding tanks (Fig. 2) containing fish which process sewage (page 18, lines 3-5), wherein fishmeal is produced from the fish (page, 18, lines 14-15).

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It is submitted that a sediment layer is inherently formed and collected in the tanks as Mamoru discloses no fish excreta removal step in the tanks.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Golub or Mamoru in view of Haynes.

Golub and Mamoru are described above. The primary references do not disclose removing the sediment.

Haynes discloses collecting and removing sediment in order to maintain water cleanliness and use the sediment in a beneficial manner (col. 4, lines 5-6).

It would have been obvious for the skilled artisan to have modified the method of either Golub or Mamoru by including a step of removing sediment in order to maintain water cleanliness and use the sediment in a beneficial manner, as suggested by Haynes.

7. Claims 6 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over either Golub or Mamoru.

Golub and Mamoru are described above. The primary references do not disclose utilizing further tanks or using a European carp grown for the specified time period.

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It is known in the art to use a plurality of tanks after initial treatment in order to have the water undergo further treatment and it is known to use fish which eat animal excreta. Accordingly, it would have been obvious for the skilled artisan to have modified the method of either Golub or Mamoru such that the method includes the step of using a plurality of tanks after initial treatment in order to have the water undergo further treatment or use European carp in order to remove animal excrement from the water, as known in the art.

Regarding how long the carp is in the tanks, it is submitted that the length of time depends on how large it is desired for the fish to be or the maximum number of fish desired to be in the tanks. Accordingly, it would have been obvious for the skilled artisan to have allowed the carp to remain in the tanks for the specified periods depending on the how large it is desired for the fish to be or the maximum number of fish desired to be in the tanks, absent a proper showing of unexpected results.

***Allowable Subject Matter***

8. Claims 8 and 11-12 are allowed.
9. Claims 18 and 22-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
10. The following is a statement of reasons for the indication of allowable subject matter:

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Per claims 8 and 11-12, in the examiner's opinion, the prior art fails to teach or fairly suggest taking the sediment from holding tank containing the sewage-processing fish and making fishmeal with the sediment.

Per claim 18, while claim 13 is not patentable for the reasons provided above, in the examiner's opinion, the prior art fails to teach or render obvious providing subdivision with the recited positioning and operational elements in the holding tanks. The instant invention provides the advantage of allowing the sequential addition and harvesting of fish in the holding tank, ensuring that the fish live in the holding tank for a controlled amount of time.

Per claims 22-24, while claim 20 is not patentable for the reasons provided above, in the examiner's opinion and it is known in the art to extrude ingredients of fishmeal to form pellets, the prior art fails to teach or render obvious combining the invention of claim 20 with the step of drying the fish to remove pathogens. The invention ensures that the fishmeal does not jeopardize the health of the fish which consume the fishmeal.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. References are cited of interest to show the state of the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Fred Prince whose telephone number is (703) 306-9169. The examiner can normally be reached on Monday-Thursday, 6:30-4:00; alt. Fridays 6:30-3:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Blaine R. Copenheaver can be reached on (703) 308-1261. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

  
**FRED G. PRINCE**  
**PRIMARY EXAMINER**

June 17, 2003